



POLICE DEPARTMENT

July 14, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Chunkyu Yun
Tax Registry No.936006
Brooklyn Court Section
Disciplinary Case No. 83432/07

The above-named member of the Department appeared before me on March 25, 2009, charged with the following:

1. Said Police Officer Chunkyu Yun, assigned to the 19th Precinct, while off-duty, on October 26, 2007, at a location known to this Department, in Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer did repeatedly kick an individual known to this Department, causing said individual to sustain bruises on said individual's arms and legs. *(As amended)*

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT

2. Said Police Officer Chunkyu Yun, as indicated in Specification #1, while off-duty, on the date and location indicated in Specification #1, with intent to harass, annoy, or alarm another person did repeatedly kick an individual known to this Department, causing said individual annoyance and alarm. *(As amended)*

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Krishna N. O'Neal, Esq. Department Advocate's Office and the Respondent was represented by John P. Tynan, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

COURTESY • PROFESSIONALISM • RESPECT

DECISION

The Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on October 26, 2007, at about 5:00 p.m., the Respondent, who was off-duty, was inside the McDonald's Restaurant at 30-01 Farrington Avenue, Queens ("McDonald's"). Also present inside McDonald's was Teresa Crespín who was with her two children.

The Department's Case

The Department called Teresa Crespín and Davia Wilson as witnesses.

Teresa Crespín

Teresa Crespín, a 30-year-old who resides in [REDACTED] is married and has two children, Nelson and Briana. On October 26, 2007, Crespín took Nelson, who was then an eight-year-old, and Briana, who was five, to McDonald's for dinner. She purchased food at the counter. As they were about to sit down to eat, Briana said that she had to go to the bathroom. Crespín put the food on a table and told Nelson to sit down and that she would be right back. She escorted Briana to the women's bathroom inside McDonald's. When Crespín opened the door to the women's bathroom, she saw that "an Asian male" was inside the bathroom. Crespín identified the Respondent in the Trial

Room as the man she saw inside the women's bathroom. Crespin told the Respondent, "I am sorry." Crespin stepped back and the Respondent closed the door. Crespin waited outside the door, patiently holding her daughter's hand, for nearly three minutes. During that time, Crespin glanced inside the men's bathroom. It was unoccupied but it appeared dirty and a black female who was a McDonald's employee came over to where they were standing and told her that the men's bathroom was dirty. When the Respondent did not come out of the women's bathroom, Crespin knocked on the door once and Briana knocked on the door twice. After about three minutes, the Respondent came out of the women's bathroom. He asked Crespin, "Why are you fucking doing this to me? What the fuck is your problem?" Crespin responded, "Sir, that's the ladies' bathroom. I wanted to take my daughter to use it, that's all I want to do." The Respondent continued, "That's what you teach your little girl? Didn't you see me use the bathroom?" Crespin told him, "Look, I don't want to argue with you. I just want to take my daughter to the bathroom." During this verbal exchange, Briana was holding Crespin's hand. The black female McDonald's employee was standing in the hallway between the men's and the women's bathrooms about five feet away from Crespin.

Crespin tried to move away from the Respondent because he was aggressive and he was screaming. The Respondent was just in front of her face outside the bathroom. He was blocking the entrance to the bathroom. As she tried to enter the bathroom, the Respondent suddenly grabbed her leg. She let go of her daughter's hand, and she fell to the floor in the hallway. Her daughter was screaming and crying and asking, "Why are you doing this to my mommy?" While she was on the floor, the Respondent started kicking her on her right leg, on her thigh and on both her knees. When he bent over and

raised his hand as if he was going to punch her, the black female McDonald's employee screamed at him, "Sir, why are you doing that?" He then backed off and went outside. He had kicked her on her body about five times.

An ambulance and police officers arrived at McDonald's. An Emergency Medical Technician (EMT) asked her if she wanted to be transported to the hospital. She refused medical attention at that time. At about 8:30 p.m. at the 109 Precinct, a female police officer escorted Crespín into the female bathroom. The officer directed Crespín to pull down her jeans and then took two photos of her left thigh and one photo of her right knee. [Department's Exhibit (DX) 1] [These photos depict a bruise on her right knee and a blue-colored, longitudinal bruise on the outside of Crespín's left thigh].

The next day, October 27, 2007, Crespín went to Flushing Hospital where she was examined. [She was diagnosed as having suffered "right arm and bilateral leg contusions." Her physical exam revealed ecchymosis on her upper right arm, ecchymosis on her right knee, ecchymosis on the outside of her left thigh, and ecchymosis on her left leg just below her knee (DX 3)]. On October 29, 2007, Crespín asked a co-worker to take five photos of her body (DX 2) [These photos depict bruises on her arm, knees and legs].

On cross-examination, when Crespín was asked whether she had pounded on the door of the women's bathroom when the Respondent did not immediately come out of the bathroom, she responded that she had made one very light knock on the door. She denied that she had raised her voice in speaking to the Respondent and she denied that she had tried to kick him. She testified that she did not get into the ambulance that arrived at McDonald's and that she refused medical attention at that time because she did

not want to leave her daughter at McDonald's. She denied that while she and Briana were waiting for the Respondent to come out of the women's bathroom she had told her daughter, "Chinese can't read English."

Davia Wilson

Davia Wilson, a 19-year-old who is presently a full-time college student seeking a Master of Arts degree, recalled that she was employed at McDonald's during October, 2007, and that on October 26, 2007, she was scheduled to work a shift that started at 5:00 p.m. She entered McDonald's just before 5:00 p.m. and walked to the women's bathroom. When she arrived at the door to the women's bathroom, which was closed, she saw a female child with a Hispanic woman. She later learned this woman's name was Crespin. She saw Crespin repeatedly and continuously knocking on the closed door. The Respondent came out of the women's bathroom screaming. He asked Crespin, "Why are you knocking on the door so many times? I'm using the fucking bathroom!" Crespin yelled back at the Respondent, "Why are you in the women's room, not the men's room?" Wilson also asked the Respondent the same question. The Respondent pushed Crespin who fell to the floor. The Respondent then kicked Crespin two or three times. Wilson yelled at the Respondent, "Stop kicking her!" He then stopped kicking Crespin. Wilson heard the Respondent tell Crespin, "I can have you arrested for assaulting a cop."

On cross-examination, Wilson was asked whether she had told Department investigators who interviewed her immediately after this incident that before Crespin fell to the floor, Crespin had raised her leg to kick the Respondent. Wilson responded that

although she could not recall saying this to the investigators who interviewed her, Crespin may have done this in self defense.

The Respondent's Case

The Respondent testified on his own behalf.

The Respondent

The Respondent recalled that when he walked over to the men's room inside McDonald's, he discovered that the door to the men's room was locked. He testified that there was a "second bathroom" so he entered it and closed, but did not lock, the door. A woman, who he later learned was Crespin, pushed the door open. The Respondent pushed the door closed and locked it. Ten seconds later, he heard banging on the door. He heard Crespin tell her daughter, "Chinese can't read English." The Respondent testified that he is a Korean-American. Crespin told her daughter to repeat what she had just told her. When a McDonald's employee opened the door with a key, he came out of the bathroom. As Crespin rushed past him into the bathroom, she tried to kick him but she lost her balance and fell down on the floor. Crespin got up and pushed him in the chest. He asked her, "Why are you pushing me?" He testified that Crespin slipped and fell down on the floor a second time. She kicked him five times. Two of her kicks landed on his stomach. Although he "hurt slightly," he was "not injured" by these kicks. He testified that he had to defend himself in order to prevent Crespin from injuring him and so used his arms to block her blows. He testified that he did not grab Crespin's leg, that he did not knock her to the floor and that he did not kick or punch her.

On cross-examination, the Respondent testified that Crespin's use of "slur words like Chinese" and her action of starting to bang on the door only ten seconds after he had closed it had "disturbed" and "annoyed" him. When he was asked if he knew that he was using the women's bathroom, he answered, "I guess I knew." He testified that "everybody saw the incident" and that one customer told Crespin to stop kicking him.

FINDINGS AND ANALYSIS

It is charged that the Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by repeatedly kicking Crespin causing her to sustain bruises on her arms and legs. It is further charged that when the Respondent repeatedly kicked Crespin he did so with intent to harass, annoy, or alarm her and that he caused her annoyance and alarm.

Because I find that Crespin was not testifying candidly when she asserted that she had only knocked on the bathroom door once very lightly and when she denied that she had raised her voice at the Respondent, I would not credit Crespin's accusation that the Respondent threw her to the floor and kicked her if that testimony stood alone. However, Crespin's claim that the Respondent knocked her to the floor and then kicked her several times while she was on the floor is believable because this testimony is directly corroborated by independent evidence: the testimony of eyewitness Davia Wilson; the medical records in evidence; and the photos taken of Crespin's body at the 109 Precinct.

Wilson, who was not shown to have any motive to lie about what she saw and heard, corroborated Crespin's testimony that the Respondent pushed her to the floor and then kicked her several times while she was on the floor. That Wilson was truthfully

reporting what she saw and heard and was not mimicking Crespín's story is reflected by the fact that although Crespín asserted that she only knocked once on the door of the women's bathroom and that she did not raise her voice during this incident, Wilson testified that she saw Crespín repeatedly and continuously knocking on the door and that after the Respondent screamed at Crespín, Crespín yelled back at him.

The medical records in evidence (DX 3) establish that the day after this incident a physical examination of Crespín revealed ecchymoses which were diagnosed as contusions on four separate areas of her body: her upper right arm, her right knee, the outside of her left thigh and below her left knee. With regard to the photos that were taken of Crespín's body at the 109 Precinct, I find it significant that the longitudinal shape and appearance of the bruise on Crespín's left thigh (DX 1A & B) is consistent with a hard contact made by the toe of a shoe. The Respondent's testimony provides no explanation for how this thigh bruise was sustained by Crespín. The Respondent denied that he had punched or kicked Crespín during this incident. Although he asserted that Crespín twice fell to the floor, contact between Crespín's thigh and a flat floor would not result in the sharply defined indentation bruise that is visible in the photos of Crespín's left thigh. As a result, this not a case where the injuries sustained by the complainant are just as consistent with the Respondent's version as to how they came about as they are with the complainant's version as to how they occurred.¹ Here, the bruise on Crespín's left thigh is consistent with her testimony that she sustained this bruise when the Respondent kicked her.

¹ See Vallebuona et al. v. Kerik, 294 AD2d 44 (1st Dept 2002), 742 NYS2d 626, 2002 NY App Div LEXIS 5903.

The Respondent acknowledged that when he came out of the bathroom he was disturbed and annoyed at Crespín because she was knocking on the bathroom door while he was inside and because she used “slur words like Chinese.” I do not credit the Respondent’s unsupported testimony that Crespín fell down twice on her own, that he did not grab Crespín’s leg, that he did not throw her to the floor, and that he did not kick her on her body while she was on the floor. Nor do I credit his unsupported, self-serving claims that Crespín kicked him five times, that two of her kicks hit him on his stomach, and that the only physical action he engaged in was to use his arms to block the blows he asserted she threw at him. The Respondent’s general lack of candor is reflected by his stubborn refusal to straight-forwardly admit that he was aware that he was inside the women’s bathroom. During his direct testimony he referred to the bathroom that he had entered as the “second bathroom.” When he was asked on cross-examination whether he knew that he was inside the women’s bathroom, he answered, “I guess I knew.”

The only claims made by the Respondent which have any support in the record are his claims that Crespín repeatedly knocked on the bathroom door and yelled at him, which Wilson confirmed, and his claim that Crespín raised her leg in an apparent attempt to kick him, a claim which was corroborated by Wilson in her statement to Department investigators. However, the Respondent here was not engaged in an enforcement action, he was not attempting to gain physical control of Crespín so that he could arrest her or handcuff her, and he was fully aware that Crespín had a young child with her. Thus, even if Crespín had raised her leg in what appeared to be an attempt to kick him, the Respondent only had the right to try to prevent her from kicking him. It is clear that the diminutive Crespín posed no real threat of physical harm to the taller and larger

Respondent. Thus, even if she had tried to kick him, he was not entitled to respond in kind. He had no right whatsoever to kick Crespin's body at all, much less to kick her several times when Crespin was lying helpless on the floor.

The Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on July 1, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of engaging in conduct prejudicial to the good order, efficiency or discipline of the Department in that he repeatedly kicked Crespin causing her to sustain bruises on her arm and legs. The Respondent has also been found Guilty, under Specification No. 2, of repeatedly kicking Crespin with intent to harass, annoy, or alarm her and that he caused her annoyance and alarm. Although Specification No. 2 does not cite to the Penal Law, the wording of this charge mirrors the language of the offense of Harassment in the second degree, a violation.²

The Respondent's action of intentionally harassing a woman by kicking her several times while she was on the floor of a restaurant, in front of her five-year-old daughter and the restaurant's employees and customers, caused embarrassment to the Department and reflects poorly on his ability to exercise the discipline and self control required of members both when they are on duty and when they are off-duty.

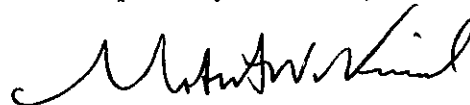
² Penal Law section 240.26(1).

In Disciplinary Case No. 77166/01 (approved on September 17, 2001), an eight-year member with no prior disciplinary history forfeited 60 suspension days and was placed on one year dismissal probation for striking a civilian in the leg during an off duty dispute, causing the civilian to suffer an injury, and for preventing the civilian from calling 911 by ripping a telephone off of a wall. In Disciplinary Case No. 81141/05 (approved on September 15, 2006), a 14-year sergeant with no prior disciplinary record forfeited 30 vacation days and 30 suspension days and was placed on dismissal probation for throwing a bag containing fingerprint jars at a subordinate which struck him in the face and caused him to suffer an injury.

Accordingly, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

The Respondent was suspended from October 26, 2007 until November 26, 2007, on which date he was restored to duty and placed on modified assignment, having served a total of 31 days on suspension. It is further recommended that the Respondent be required to forfeit the 31 days he has already served on pre-trial suspension regarding this incident and that he also forfeit 29 vacation days for a total forfeiture of 60 days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED
SEP 17 2008

RAYMOND W. KELLY
POLICE COMMISSIONER

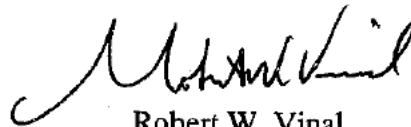
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CHUNKYU YUN
TAX REGISTRY NO. 936006
DISCIPLINARY CASE NO. 83432/07

The Respondent received an overall rating of 4.0 on his 2008 annual performance evaluation, 4.0 on his 2007 annual evaluation and 3.0 on his 2006 evaluation.

He has no medals. [REDACTED] He has no prior formal disciplinary record. He has been placed in Level II Discipline Monitoring.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner - Trials